

EXHIBIT 42

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re:
Bair Hugger Forced Air Warming
Products Liability Litigation

This Document Relates To:
All Actions MDL No. 15-2666 (JNE/FLM)

DEPOSITION OF ALBERT P. VAN DUREN
VOLUME I, PAGES 1 - 326
MARCH 7, 2017

(The following is the deposition of ALBERT
P. VAN DUREN, taken pursuant to Notice of Taking
Deposition pursuant to Rule 30(b)(6) of the Federal
Rules of Civil Procedure, via videotape, at the
offices of Ciresi Conlin L.L.P., 225 South 6th Street,
Suite 4600, Minneapolis, Minnesota, commencing at
approximately 9:00 o'clock a.m., March 7, 2017.)

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EXHIBITS DESCRIPTION PAGE MARKED

Ex 350 Testing log, no Bates numbers 150

351 Warning label from the 200 Bair
Hugger, no Bates numbers 310

WITNESS EXAMINATION BY PAGE

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Mr. Assaad 113

Ms. Zimmerman 292

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APPEARANCES:

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PROCEEDINGS

(Witness sworn.)

ALBERT P. VAN DUREN

called as a witness, being first duly sworn,
was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. BANKSTON:

Q. Good morning, Mr. Van Duren.

A. **Good morning.**

Q. We're going to skip some of the formalities
because I know you've been in that chair before, done
some depositions, so we won't go over all of that
today; I'm sure you're up to speed. But before we
dive in, I did want to talk to you, make sure that you
understood exactly what kind of deposition it is we're
taking today, and -- and by that I mean that today you
are appearing as a corporate representative for 3M.
Do you feel like you have an understanding of what
that is and what your purpose is here today?

A. **I believe so.**

Q. Okay. I'm going to be asking you questions,
and in response to these questions today you're going
to be giving testimony as though you're the voice of
3M. Obviously, I can't put 3M in that chair, so
somebody has to be chosen. I've been informed that

1 (Pages 1 to 4)

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<p style="text-align: right;">Page 257</p> <p>1 air, has an effect on the particle counts in the 2 sterile field. 3 MR. BLACKWELL: Same objection. 4 A. It -- 5 I mean it's possible that -- that that's one 6 conclusion you could draw from this data. 7 Q. Well every single study indicates that, so 8 what is your basis that it's possible and not 9 probable? 10 MR. BLACKWELL: Object and move to strike 11 counsel's comment/statement. Object to the form of 12 the question. 13 A. Again, the -- the study at Amersfoort is a 14 different type of study than that conducted by Legg. 15 The -- the study at -- in Amersfoort looked at 16 externally-generated particles in the sterile field; 17 Legg looked at, ostensibly, particles being generated 18 by the forced-air warming unit itself, so it's a 19 different -- 20 These are different kinds of studies. 21 Q. Legg and McGovern used bubble counts and -- 22 and particle counters. 23 A. Oh, sorry. Yeah. Okay. 24 Q. I mean we're -- 25 It doesn't matter where the particles are</p>	<p style="text-align: right;">Page 259</p> <p>1 Q. I don't see a decrease in Exhibit 77 of 2 infection rates. Do you? 3 A. Well they haven't -- 4 So in this particular exhibit the -- the 5 rates haven't changed dramatically from, say, 1998 or 6 1997 to 19 -- or to 2012, but if you look at the -- if 7 you look at the second one that I have done using the 8 data from Parvizi, there clearly is a trend in -- of 9 decreased surgical-site infections, and it's more in 10 line with the kinds of infection rates that we see at 11 individual institutions in the United States. 12 Q. Are we talking about the 2001-to-2009 data? 13 A. The latest paper, whichever -- whichever 14 data set that is. 15 Q. Okay. Well his own paper showed an increase 16 over the -- from 2001 to 2009. Even though it was a 17 slight increase, it was an increase. 18 A. No, I don't think that's correct. The data 19 that I have shows a -- a clear decline in infection -- 20 in joint infection rates over that time period. 21 Q. I want to print up that article for you. 22 We'll move on and I'll get it printed up and we can 23 talk about it. 24 We're talking about the 2012 article; 25 correct?</p>
<p style="text-align: right;">Page 258</p> <p>1 coming from. Okay? Because particles are all over 2 the operating room and underneath the operating room 3 table and everywhere. Do you agree? 4 A. Yes. 5 Q. Okay. Based on the data that we have today, 6 including the study funded by 3M as well as other 7 studies, every single study indicates that the Bair 8 Hugger increases the particle count over the sterile 9 field; correct? 10 A. In absolute numbers, yes. 11 Q. Yes. Okay. And you have no internal 12 studies to refute that; correct? 13 A. No, we don't. 14 Q. What's defendants' knowledge and analysis of 15 third-party testing regarding whether or not the Bair 16 Hugger causes surgical-site infection? 17 A. Well again, the analysis that I showed you 18 that was done with the CDC data, for example. And the 19 secular trend of deep joint infection over the last 20 decade or so has generally declined in hip and knee 21 implant surgery, so at a -- at a macro level there 22 doesn't appear to be an increase in the number of 23 these infections despite the fact that patients are 24 generally older and sicker and there are more of them 25 now than there were a decade ago.</p>	<p style="text-align: right;">Page 260</p> <p>1 A. I believe that's the corr -- yeah, I believe 2 that's the correct one. 3 Q. Any other articles or studies that you rely 4 upon with respect to third-party testing regarding 5 surgical-site infection? 6 A. Well the Kimberger article would -- for 7 example, although that's not surgical-site infection, 8 but -- 9 Q. I guess a preface -- I don't mean to 10 interrupt -- I want to talk about total hip and total 11 knee arthroplasty. 12 A. Yes. 13 Q. Okay. 14 A. Right. 15 Q. Isn't it true that there's a pilot study 16 being performed right now funded by 3M in the U.K.? 17 A. Yes. 18 Q. Okay. Is that study started? 19 A. I don't think it started recruiting yet. 20 Q. Okay. And that's going to look at 21 surgical-site infections for a certain type of 22 orthopedic surgery; correct? 23 A. Yes, as one of the outcomes. 24 Q. And one of the investigators is Mike Reed; 25 correct?</p>

65 (Pages 257 to 260)